

Hearing Date: May 15, 2019 at
10:00 AM

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

La Cremaillere Restaurant Corp,

Case No.: 19-22823 (RDD)

Debtor,

-----X

**OBJECTION OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND
FINANCE TO THE DEBTOR'S
MOTION TO USE CASH COLLATERAL AND FOR ADEQUATE PROTECTION
PURSUANT TO 11 U.S.C. SECTIONS 361 AND 363(e)**

The New York State Department of Taxation and Finance ("NYS DTF"), by its attorney, Letitia James, Attorney General of the State of New York, respectfully submits this Objection ("Objection") to the motion of debtor La Cremaillere Restaurant Corp. ("Debtor") for an order (A) authorizing the use of cash collateral pursuant to Bankruptcy Code Section 363(c)(2) and Bankruptcy Rule 4001 on an interim basis and providing adequate protection pursuant to 11 U.S.C. Sections 361 and 362; (B) scheduling a final hearing; and (C) for such other and further relief as the Court deems just and proper ("Motion"), based on the following facts and grounds.

OBJECTION

1. On April 17, 2019, the Debtor commenced its voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. (Dkt. No. 1.)
2. On April 26, NYS DTF filed Amended Proof of Claim ("Claim") in the amount of \$519,021.75, consisting of a secured claim of \$472,824.98, an unsecured priority claim of

\$39,910.52 and a general unsecured claim of \$6,286.25. Claims Register 1-2. A copy of the claim is attached as Exhibit A.

3. The secured portion of the Claim is for unpaid sales tax for the periods ending May 31, 2014 and February 28, 2017. NYS DTF perfected its liens by filing Warrants with the New York Secretary of State and the Westchester County Clerk's Office on January 12, 2015, and November 24, 2017. In accordance with New York State Tax Law Section 1092, the Warrants attach to all of the Debtor's real and personal property.

4. On April 30, 2019, the Debtor filed the Motion to approve use of its cash collateral and to provide Celtic Bank adequate protection. The Motion does not propose any protection to the secured claim NYS DTF holds which is required by 11 U.S.C. Section 363(e).

5. On May 10, 2019, the United States of America, on behalf of the IRS, filed an objection to the Motion and a request for adequate protection. Dkt. 8. The IRS Objection correctly observes that the Motion impermissibly seeks to elevate Celtic Bank's claims above the IRS Claim. NYS DTF joins in that part of the IRS Objection because the Motion also seeks to subordinate the NYS DTF secured claim.


6. NYS DTF has discussed its request for adequate protection with counsel for the Debtor and is hopeful that acceptable arrangements for adequate protection will be made in advance of the interim hearing. If not, NYS DTF requests that the Court issue an order providing adequate protection to NYS DTF and deny the Motion as presented.

WHEREFORE, NYS DTF respectfully requests that the Court deny the Motion as presented, direct the Debtor to provide adequate protection for its secured claim and grant such other and further relief as it deems just and proper.

Dated: New York, New York
May 10, 2019

Respectfully submitted,

LETITIA JAMES
Attorney General of the
State of New York
Attorney for the New York State
Department of Taxation and Finance
By:



Enid Nagler Stuart
Assistant Attorney General
Special Bankruptcy Counsel
28 Liberty Street
New York, New York 10005
Tel. No. (212) 416-8666

Exhibit A

**Taxation and Finance**

Bankruptcy Section
P O Box 5300
Albany NY 12205-0300

(518) 457-3160

Statement date: 4/30/2019

Amendment: 1st

Case number: 19-22823 RDD

Refer to this number for inquiries

Total claim amount: \$519,021.75

Taxpayer ID#: B-13-1954965-1

Pre-Petition Proof of Claim

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
U. S. COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601

This is a statement of tax liabilities for LA CREMAILLE RESTAURANTS CORP.. Penalty and interest for each liability is computed to 4/17/2019.

Secured Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type	Warrant Date	Cnty
SALES	05/31/14	L-041810480-2	0.00	3,347.47	8,138.46	11,485.93	ACT	01/12/15	WEST
SALES	02/28/17	L-046991754-2	346,703.49	0.00	114,635.56	461,339.05	AUD	11/24/17	WEST
SubTotal \$						472,824.98			

Unsecured Priority Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type
WITHLD	09/30/18	L-049396850-8	0.00	0.00	24.40	24.40	EST
SALES	11/30/18	L-049432118-7	10,000.00	0.00	476.38	10,476.38	ACT
SALES	02/28/19	L-049746305-8	28,997.10	0.00	312.64	29,309.74	ACT
SALES	03/11/19	L-049562156-4	50.00	0.00	0.00	50.00	ACT
SALES	03/21/19	L-049589220-4	50.00	0.00	0.00	50.00	ACT
SubTotal \$						39,910.52	

General Unsecured Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type
WITHLD	09/30/18	L-049396850-8	0.00	1,000.00	0.00	1,000.00	EST
WITHLD	12/31/18	L-049657702-7	0.00	1,000.00	0.00	1,000.00	EST
SALES	11/30/18	L-049432118-7	0.00	1,386.54	0.00	1,386.54	ACT

(Continued on back)

General Unsecured Liabilities (Continued)

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type
SALES	02/28/19	L-049746305-8	0.00	2,899.71	0.00	2,899.71	ACT
					SubTotal \$	6,286.25	

This claim amends and supercedes the previous claim dated 4/23/2019.

Current Annual Interest Rates by Tax Type: Withholding - 10%, Sales and Use - 14.5%

Liability Type Descriptions: EST - Estimated (No Return Filed), ACT - Actual Return Filed, AUD - Audit Assessment



CERTIFICATE OF SERVICE

I, Enid Nagler Stuart of the NYS Office of the Attorney General, hereby certify
that on May 10, 2019 I electronically filed and served the attached *Objection of the New York
State Department of Taxation and Finance*, by using the CM/ECF system.

Executed on May 10, 2019



Enid Nagler Stuart